

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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|-------------------------------|---|----------------------------------|
| ITV DIRECT, INC. |) | Civil Action No. 04-CV-10421-JLT |
| |) | |
| Plaintiffs, |) | Honorable Joseph L. Tauro |
| |) | |
| v. |) | |
| |) | |
| HEALTHY SOLUTIONS LLC, et al, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |
| AND RELATED CASES |) | |
| |) | |

**JOINT MOTION OF DEFENDANTS AND PLAINTIFFS
FOR DISMISSAL PURSUANT TO FED. R. CIV. PRO. 41;
MEMORANDUM IN SUPPORT THEREOF**

Plaintiff/Counter-Defendant ITV DIRECT, INC. and Plaintiff/Counter-Defendant DIRECT FULFILLMENT LLC (hereinafter collectively referred to as the “ITV DIRECT PARTIES”) and Defendants/Counterclaimants HEALTHY SOLUTIONS LLC d/b/a Direct Business Concepts, HEALTH SOLUTIONS INC., ALEJANDRO GUERRERO, GREG GEREMESZ and MICHAEL HOWELL, (hereinafter collectively referred to as the “HEALTHY SOLUTIONS LLC PARTIES”) jointly move this Court for an Order of Dismissal with Prejudice of the claims and causes of action among pursuant to the Stipulation of Dismissal filed concurrently herewith. This Motion is required by the Preliminary Injunction entered against Healthy Solutions LLC (not against the other defendants) on April 14, 2004.

This motion is supported by the Memorandum of Law below and the records and files herein.

Respectfully submitted,

SEYFARTH SHAW LLP

/s/ Christopher Robertson, Esq.

Peter Brooks, Esq.

Christopher Robertson, Esq.

Counsel for ITV Direct Inc.,

Direct Fulfillment LLC

Dated: March 30, 2005

O'CONNOR CHRISTENSEN &

MCLAUGHLIN LLP

/s/ Becky V. Christensen, Esq.

Becky V. Christensen, Esq.

Counsel for Healthy Solutions LLC,

Health Solutions Inc, Alejandro Guerrero,

Michael Howell, Gregory Geremesz

Dustin F. Hecker, Esq.

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Counsel for Healthy Solutions LLC,

Health Solutions Inc, Alejandro Guerrero,

Michael Howell, Gregory Geremesz

Dated: March 30, 2005

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Description of the Parties and Issues

This action began in March 2004 when the ITV Direct Parties sued the Healthy Solutions LLC Parties. A case pending in the Central District of California involving the same nucleus of facts was later consolidated with the case. The parties have disputes relating *inter alia* to breaches of contract, contract interpretation, trademark ownership and rights, trademark infringement, fraud, unfair business practices, and violation of

publicity rights and indemnification relating to the manufacture, distribution and sale of a nutritional supplement known as Supreme Greens.

Plaintiff in Intervention Cappseals Inc. filed its Complaint in Intervention in this action against Defendant Healthy Solutions LLC and the ITV Direct Parties seeking *inter alia* money damages and injunction relief for its manufacture and sale of Supreme Greens. Plaintiff in Intervention claims it delivered over \$892,000 of Supreme Greens to the ITV Direct Parties.

On April 14, 2004, this Court entered a Preliminary Injunction against defendant Healthy Solutions LLC only prohibiting Healthy Solutions LLC from:

“ . . .compromising, transferring, assigning, or otherwise disposing of, alienating or hypothecating its interest in any and all monies due or to become due to DBC [Healthy Solutions LLC] from ITV Direct for the manufacture and shipment of Supreme Greens to ITV Direct or its interest in any and all intellectual property related to Supreme Greens . . .”

The stipulated mutual dismissal between Healthy Solutions LLC and ITV Direct compromises Healthy Solutions LLC's claims and causes of action against ITV Direct and therefore requires Court approval.

This approval should be granted because it avoids wasting Court resources and time, is in the interests of the signatory parties, and is in the interest of justice. The vast majority of disputed issues of fact and law are resolved through the Stipulated Dismissal, including the various trademark issues, torts, contract claims and common law rights disputed among the ITV Direct and Healthy Solutions Parties. Much of Plaintiff in Intervention's Cappseals Complaint, essentially a failure to pay for goods delivered case, remain, but the issues are narrower. The settlement therefore would reduce the trial time of this cause from as much as ten days to as little as one.

In addition, Healthy Solutions LLC has filed an Offer of Judgment allowing Plaintiff in Intervention Cappseals Inc. to enter judgment against it for damages as plead in its Complaint.

The Healthy Solutions LLC Parties have been attempting to settle this matter globally for many months. Being unable to reach agreement with all parties, the vast majority of issues have been resolved and this settlement should therefore be approved.

Respectfully submitted,

O'CONNOR CHRISTENSEN &
MCLAUGHLIN LLP

/s/ Becky V. Christensen, Esq.
Becky V. Christensen, Esq.
Counsel for Healthy Solutions LLC,
Health Solutions Inc, Alejandro Guerrero,
Michael Howell, Gregory Geremesz

Dated: March 30, 2005

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2005, a copy of foregoing JOINT MOTION OF DEFENDANTS AND PLAINTIFFS FOR DISMISSAL PURSUANT TO FED. R. CIV. PRO. 41; MEMORANDUM IN SUPPORT THEREOF was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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